

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11741 of 2017

Hrishikesh Shripad Deshpande

..Petitioner

v/s.

M/s. Saras Construction through
Partner & Ors.

..Respondents

Mr. Jagdish Reddy (Aradwad) for the Petitioner.

Mr. R.S.Apte, Sr. Counsel i/b. Saurabh Okafor the Respondent Nos.1
to 4.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : APRIL 08, 2021.**

P.C.

1. The Petitioner herein has challenged the Order dated 27.9.2017 whereby the learned Civil Judge, Senior Division, Sangli has referred the parties for arbitration in terms of clause (6) of the Agreement dated 7.10.2013.

2. Mr. Reddy, learned Counsel for the Petitioner submits that the Arbitration Agreement was restricted to RCC Construction, brick work and plastering. It is his contention that the amount claimed in the suit

and the dispute between the parties is not in respect of the work contract which is the subject matter of the agreement dated 7.10.2013, but is in respect of the additional work carried out by the Petitioner as per the oral direction of Respondent No.1. He therefore contends that the learned Judge was not justified in invoking clause (6) of the Agreement dated 7.10.2013 which was restricted to Phase 1 construction. He further submits that clause 6 r/w. Clause 4(a) of the Agreement provides for appointment of the named Arbitrator by name Architect Ravi Patwardhan. He submits that the Architect is the husband of Respondent No.4 and is interested person. He therefore contends that Architect Ravi Patwardhsan is not competent to adjudicate the dispute.

3. Shri Apte, learned Sr. Counsel for the Respondent submits that the contract is not restricted to RCC construction, brick work and plastering which is described as Phase I Construction, but also includes further work necessary for completion of the construction. He submits that the Petitioner has carried out further work of construction in terms of the contract. He submits that in terms of Clause 6 of the Agreement, any dispute between the parties is required to be decided

by the Arbitrator named in the Agreement.

4. I have perused the records and considered the submission advanced by the learned Counsel for the respective parties.

5. The primary question for determination is whether the dispute raised in the suit is the subject matter of an arbitration agreement.

6. It is not in dispute that Respondent No.1 who is the owner of the property under CTS No. 8655 of Village Vishrambaug, Sangli had decided to develop the said property and to get the actual construction work done through a qualified Contractor. Accordingly the Petitioner and the Respondent no.1 entered into agreement dated 7.10.2013, whereunder the Petitioner came to be appointed as a Contractor to carry out the said construction. Clause 1 of the said Agreement which relates to the nature of the construction work agreed to be constructed reads thus:

“1) Regarding Construction:

Party No.1 has seen and verified the plan, drawing and designs and is ready to carry out the construction work accordingly and also as per the changes made

and suggested by the owner and Architect from time to time. It is clearly agreed and understood and made it clear to the contractor that this works contract is restricted up to RCC Construction Brick work, and plastering. The rates (consideration) are fixed and finalized considering this nature of work. It is the choice of the owner either the further work done through contractor or by any body.”

7. A plain reading of the said clause clearly indicates that though the work contract was restricted upto RCC Construction, brick work and plastering under the said agreement, the respondent no.1 had an option to decide whether the further work would be done by the Petitioner-contractor or any other person. The pleadings itself indicate that the Respondent had exercised this option under the Agreement to get the further work done through the Petitioner Contractor. The consideration in respect of the further work as specified in para 2 of the Complaint, was fixed at Rs.550/- per sq. ft.

8. The averments in the complaint clearly indicate that the Petitioner had completed the construction work as per the agreement which is

referred to as Phase 1 construction and further construction as specified in para 6 of the Plaint, referred to as Phase 2 construction. The Petitioner submitted final bill in respect of Phase 1 and Phase 2 construction to the Architect appointed under the Agreement. Dispute over payment of the bills relating to Phase 1 and Phase 2 construction has led to filing of the suit for recovery of money.

9. The subject matter of the agreement is not only restricted to Phase 1 construction, but also includes Phase 2 construction which has been carried out by the Petitioner in view of the option exercised by the Respondent No.1 under the agreement. The dispute between the parties is in respect of the payment of bills relating to Phase 1 and Phase 2 construction. Thus there can be no dispute that the subject matter of the suit is covered by arbitration agreement entered into by and between the parties. The dispute having arisen from the contract, learned Judge was perfectly justified in referring the parties to arbitration.

10. Clause 6 of the agreement provides for reference of dispute or difference of opinion to the Architect. The term 'Architect' as

understood by the parties as per clause 4(a) means Architect Ravi Patwardhan and in the event of his ceasing to be an Architect for the purpose of contract, such other person/ persons nominated by Respondent-owner. The Petitioner seeks change of Arbitrator on the ground of bias. It is true that apprehension of bias is one of the grounds to substitute or remove the Arbitrator. However, such apprehension must be reasonable, based on cogent material. The apprehension of bias expressed by the Petitioner against the Arbitrator on their voluntary choice, is not a reasonable apprehension but vague suspicion, and being premature cannot be entertained at this stage.

11. Under the circumstances, in my considered view, there is no palpable error in the order. The Petition has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)